

This letter discusses the definition of "taxpayer" under the Public

April 6, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated October 23, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Could you please answer the following questions regarding the new Electricity Distribution Tax:

1. Under the Public Utilities (Electricity) Revenue Act, 35 ILCS 620/1, there are two definitions of 'taxpayer', the first for purposes of the tax on the distribution of electricity, is this the tax under 35 ILCS 620/2a.1? The second definition applies for purposes of the 'Public Utilities Revenue Tax'; what is the Public Utilities Revenue Tax? Also, what does it mean to be 'engaged in business' for the purposes of falling under these definitions?
2. The definition of 'alternative retail electric supplier' under the Public Utilities Act, 220 ILCS 5/16-102, includes an exception (under (iv)) for a retail customer that obtains its electric power and energy from its own cogeneration or self-generation facilities. What is meant by its own? for example, would a company which has a co-generation facility on-site, which was constructed by an unrelated entity and which the company owns a 1/3 share in qualify as owning the cogeneration facility where the company obtains its electric energy from such facility?

Thank you for any help you can provide with these questions. You can fax your reply to #####.

Prior to P.A. 90-561, the term "taxpayer," under the Public Utilities Revenue Act meant "a person engaged in the business of distributing, supplying, furnishing or selling electricity for use or consumption and not for resale." 35 ILCS 620/1. This definition applied to the entire Act, which included both the tax imposed at Section 2 on persons engaged in this State in the business of distributing, supplying, furnishing or selling electricity to persons for use or consumption and not for resale, and the tax imposed at Section 2a.1 on invested capital.

Effective January 1, 1998, P.A. 90-561 amended the Public Utilities Revenue Act to provide new definitions for the term "taxpayer." The first definition is

for the purposes of the new "tax on the distribution of electricity imposed by this Act..." The tax on the distribution of electricity, referred to above, is the tax imposed at 35 ILCS 620/2a.1(a). The second definition is for purposes of the taxes previously imposed under the Public Utilities Revenue Act, including both the tax imposed at Section 2 and the invested capital tax imposed at Section 2a.1, now Section 2a.1(b). Under P.A. 90-561, the tax imposed at Section 2 remained in effect until the end of July 1998, but was repealed effective August 1, 1998. It was replaced by the Electricity Excise Tax which imposes a tax on the privilege of using in this State electricity purchased for use or consumption and not for resale. See 35 ILCS 640/2-1. The second definition, however, continues to apply to the invested capital tax, which remains in effect at Section 2a.1(b).

There is no statutory or regulatory definition for the phrase, "engaged in the business," specific to the Public Utilities Revenue Act. However, Section 5 of the Public Utilities Revenue Act incorporates by reference several provisions of the Retailers' Occupation Tax Act. Section 5 also provides that "[r]eferences in such incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers or to persons engaged in the business of selling tangible personal property mean persons engaged in the business of distributing electricity when used in this Act." The Department's regulations for the Retailers' Occupation Tax provide that "[a]ny person who habitually engages in selling tangible personal property for use or consumption, or who, in any manner or at any time, advertises, solicits, offers for sale or holds himself out to the public to be a seller of tangible personal property for use or consumption other than in the course of engaging in a service occupation is engaged in the business that is taxed by the Act, provided that such person is engaged in such business in this State."

With regard to the definition of "alternative retail electric supplier" under the Public Utilities Act, we defer to the Illinois Commerce Commission to provide guidance, since they are the agency responsible for administering that Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.